

**KERN COUNTY ENVIRONMENTAL HEALTH SERVICES DEPARTMENT
HAZARDOUS MATERIALS MANAGEMENT PROGRAM**

CERTIFIED UNIFIED PROGRAM AGENCY (CUPA)

In the Matter of:) Docket No. JC 0001/09-06
)
Calash LLC) CONSENT ORDER
34575 Famoso Road)
Bakersfield, CA 93308)
Facility ID No: FA000 0990)
) Health and Safety Code
Respondent) Section 25187

The Kern County Environmental Health Services Department, Certified Unified Program

Agency (Agency), the Department of Toxic Substances Control (Department), and Calash, LLC

(Respondent) enter into this Consent Order (Order) and agree as follows:

1. Respondent handles and stores fly ash at 34575 Famoso Road, Bakersfield, California 93308.
2. The Agency inspected the facility on July 3, and 10, 2006.
3. The Agency alleges the following:
 - 3.1 The Respondent violated Health and Safety Code, Division 20, Chapter 6.5, Section 25201, in that the Respondent stored hazardous waste (fly ash with a pH greater than or equal to 12.5) without having first obtained the necessary facility permit or other grant of authorization from the Department.
 - 3.2 The Respondent violated Health and Safety Code, Division 20, Chapter 6.5, Section 25163 in that the Respondent transported hazardous waste (fly ash with a pH greater than or equal to 12.5) without a valid and current transporter registration from the Department.
4. A dispute exists regarding the alleged violations.
5. The parties wish to avoid the expense of litigation and ensure prompt compliance.
6. Jurisdiction exists pursuant to Health and Safety Code Section 25187.

7. Respondent waives any right to a formal hearing in this matter. Respondent agrees that due process has been provided with respect to this matter.
8. This Consent Order shall constitute full settlement of the violations alleged above but does not limit the Agency from taking appropriate enforcement action concerning other violations.

SCHEDULE FOR COMPLIANCE

9. Respondent shall comply with the following:
 - 9.1 The Respondent agrees to pay the Agency \$10,000 for reimbursement of the Agency's administrative costs and a minimum of \$10,000 in penalties.
 - 9.2 If all of the fly ash is determined to have a pH of 12.5 or greater, Respondent agrees to pay to the Agency a total of \$97,650 penalty of which \$10,000 shall be applied toward reimbursement of Agency's administrative costs. If only a portion of the fly ash is determined to have a pH of 12.5 or greater, the total \$97,650 penalty shall be reduced by the same percentage as the percentage of fly ash with a pH below 12.5. Respondent shall keep accurate records documenting the pH of all volumes of fly ash as it is tested by a California certified laboratory. Irrespective of the volume of fly ash with a pH of 12.5 or greater, if the Respondent complies and removes the accumulated ash by the deadline specified below, fifty percent of the adjusted penalty shall be forgiven down to but not less than \$10,000. Respondent shall not repeat these violations for two years following the date of this agreement or the full penalty will be re-administered.
 - 9.3 Respondent shall implement the attached workplan to remove the existing fly ash stock piles from 34575 Famoso Road. As provided in the workplan, if the mean pH of the coal fly ash equals or exceeds a pH of 12.5, Respondent shall treat to non-hazardous waste levels all fly ash subpiles that equal or exceed a pH of 12.5. The treatment must be conducted in accordance with a Department and Agency approved treatment work plan. The Respondent shall submit the work plan to the Department and Agency for approval no later than 2 working days following the date of this agreement. The Department and Agency's approval of the work plan shall constitute authorization for the treatment activity. In the event that the approved treatment activity fails to achieve non-hazardous pH levels of less than 12.5 the Respondent shall remove the remaining hazardous waste from the property and dispose of it according to regulatory requirements not later than the date set forth below. Failure to so remove all fly ash shall void the penalty forgiveness set forth above.
 - 9.4 All fly ash, including material accepted from biomass facilities must be removed from the property within 90 days of the Department and Agency's approval of the attached workplan. The Respondent shall notify the Agency and the Department when the removal is completed. In addition, the Respondent shall, within 30 days of the date of this agreement, implement a testing program for all future incoming shipments to assure that

they do not exhibit hazardous waste characteristics. No additional shipments of hazardous waste shall be stored on the property. If the Respondent's testing program determines hazardous waste has been delivered to the site, the Respondent is to immediately notify the Agency. The Respondent must manage all identified hazardous waste in accord with applicable laws and regulations.

- 9.5 Any fly ash not meeting hazardous waste criteria maybe handled and removed from the property without restrictions.
- 9.6 For all activities not covered under this order, Respondent must comply with all local and state regulations, permitting requirements, and related policies.
- 9.7 The current enforcement action by the Kern County Engineering and Survey Services Code Compliance Division against Respondent will be suspended until the earlier date of either 90 days from the Agency's approval of the attached workplan or February 1, 2007. Completion of removal of all materials currently on the property and payment of the final adjusted Penalty established pursuant to section 9.2, shall constitute full settlement of the violations alleged by Kern County Engineering and Survey Services Code Compliance Division in connection with the violations alleged herein. Future non-hazardous ash transfer operations at the property will be managed pursuant to terms and conditions to be established by Kern County Planning Department and the Kern County General Services Division and shall be in compliance with all applicable local, State and federal laws.
- 9.8 Submittals: All submittals from Respondent pursuant to this Consent Order shall be sent to:

Mr. Joe Canas
Kern County Environmental Health Services Department
Certified Unified Program Agency
2700 "M" Street, Suite 300
Bakersfield, CA 93301

And

Mr. Kim Wilhelm, Chief
Statewide Compliance Division
Department Toxic Substances Control
8800 Cal Center Drive
Sacramento, CA 95826-3200

- 9.9 Incorporation of Plans and Reports. All plans, schedules, and reports submitted by Respondent pursuant to this Order, and approved by the Agency or the Department, are hereby incorporated into this Order.
- 9.10 Communications: All communications from the Agency or the Department shall be communicated to the Respondent in writing by the Supervisor of the Kern County

Environmental Health Services Department, Certified Unified Program Agency, or the Department's Chief of the Statewide Compliance Division. No informal advice, guidance, suggestions, or comments by the Agency regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

- 9.11 Compliance with Applicable Laws: Except as provided in the Order, Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety
- 9.12 Site Access: Access to the site shall be provided at all reasonable times to employees, contractors, and consultants of the Agency or Department, and any agency having jurisdiction. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may have by operation of law. The Agency and its authorized representatives shall have the authority to enter and move freely about all property at the site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the site; reviewing the progress of Respondent in carrying out the terms of this Consent Order; and conducting such tests as the Agency may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken to this Consent Order.
- 9.13 Liability: Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.
- 9.14 Government Liabilities: The Kern County Environmental Health Services Department, and the Department of Toxic Substances Control shall not be held liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties in carrying out activities pursuant to this Consent Order, nor shall the County of Kern or the Department of Toxic Substances Control be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order.
- 9.15 Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.
- 9.16 Extension Approvals: If the Agency determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

PAYMENT

10. Respondent shall pay the Agency \$20,000 of which \$10,000 shall be for reimbursement of the Agency's cost. Respondent's check shall be made payable, within 10 days of the date of this agreement, to the Kern County Environmental Health Services Department. Within 30 days of the completion of testing of all fly ash cells and subcells, Respondent shall pay the Agency the applicable final adjusted Penalty established pursuant to section 9.2. Payments shall be delivered to:

Kern County Environmental Health Services Department
2700 "M" Street Suite 300
Bakersfield, CA 93301

A photocopy of the check shall be sent to:

Mr. Joe Canas
Kern County Environmental Health Department
2700 "M" Street Suite 300
Bakersfield, CA 93301

If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code §25360.1 and to pay all costs incurred by the Agency in pursuing collection, including attorney's fees.

OTHER PROVISIONS

11. **Additional Enforcement Actions:** By agreeing to this Consent Order, the Agency does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.
- 11.1 **Penalties for Noncompliance:** Failure to comply with the terms of this Consent Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Agency or other government agencies as a result of such failure, as provided by HSC section §25188 and other applicable provisions of law.
- 11.2 **Parties Bound:** This Consent Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, subsidiary and parent corporations, and upon the Agency and any successor Agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.
- 11.3 **Effective Date:** The effective date of this Consent Order is the date it is signed by the Agency.

11.4 Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

Dated: September 9, 2006 Original signed by Larry F. Baum
Larry F. Baum, Chief Operating Officer
Calash, LLC

Dated: October 2, 2006 Original signed by Matthew Constantine
Matthew Constantine, Director
Kern County Environmental Health
Services Department

Dated: October 2, 2006 Original signed by Kim F. Wilhelm
Kim Wilhelm, Chief
Statewide Compliance Division
Department of Toxic Substances Control